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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/066,414	02/01/2002	Noriyoshi Hiraoka	FS.F4138US2RAC	4645

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EXAMINER

BASINGER, SHERMAN D

ART UNIT PAPER NUMBER

3617

DATE MAILED: 10/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/066,414

Applicant(s)

HIRAOKA ET AL.

Examiner

Sherman D. Basinger

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 22 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 and 20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 23 July 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 08/857016.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Reissue Applications

1. The original patent, or a statement as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.
2. Claim 11 as filed September 22, 2003 has an error in that in line 7, "on passage" should have been –one passage-. **In submitting a corrected claim 11 in response to this office action the parenthetical expression "(Original)" should not be used. See 37 C.F.R. 1.173(b)(2).**
Claim 2 as filed July 23, 2003 is acceptable. Applicant submitted claims 2 and 11 in response to the first office action in order to add the subject matter of the Certificate of Correction dated Twenty-first Day of August, 2001.
A copy of the Certificate of Correction dated Twenty-first Day of August, 2001 has been received on July 23, 2003.
3. The substitute declaration filed June 16, 2003 has been received. **The rejection set forth in paragraphs 1 and 2 of the DETAILED ACTION of the office action mailed November 20, 2002 has been overcome by the filing of this substitute declaration.**
4. The amendment filed September 22, 2003 has been entered. However, it is pointed out that indicating that claim 19 has been canceled by "19. (Canceled)" is incorrect. Applicant should have merely stated: Cancel claim 19.
See MPEP 1453.

5. The substance of the interview of May 21, 2003 filed June 16, 2003 is acceptable.

6. In accordance with 37 CFR 1.175(b)(1), a supplemental reissue oath/declaration under 37 CFR 1.175(b)(1) must be received before this reissue application can be allowed.

Claims 1-18 and 20 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251. See 37 CFR 1.175. The nature of the defect is set forth above.

Receipt of an appropriate supplemental oath/declaration under 37 CFR 1.175(b)(1) will overcome this rejection under 35 U.S.C. 251. An example of acceptable language to be used in the supplemental oath/declaration is as follows:

"Every error in the patent which was corrected in the present reissue application, and is not covered by a prior oath/declaration submitted in this application, arose without any deceptive intention on the part of the applicant."

A supplemental oath/declaration should have been filed with the Supplemental Response filed September 22, 2003.

7. Claims 13-15 are rejected under 35 U.S.C. 251 as being based upon new matter added to the patent for which reissue is sought. The added material which is not supported by the prior patent is as follows:

In claim 13, lines 3-5, "a cylinder head exhaust passage communicating with both of said cylinders through said cylinder head" has no support in the specification as originally filed in patent 5,893,783.

None of the cylinder head exhaust passages as disclosed communicate with more than the cylinder to which each is related.

8. Claims 13-15 are rejected under 35 U.S.C. 251 as not being for the same invention as that disclosed in the original patent.

Claims presented in the reissue application are considered to satisfy the requirement of 35 U.S.C. 251 that the claims be "for the invention disclosed in the original patent" if the claims presented in the reissue application are described in the original patent specification and are enabled in the original patent specification. The invention claimed in new claims 13-15 is neither described in the original patent specification of patent 5,893,783 nor are they enabled by the specification as originally filed in patent 5,893,783.

The specification as originally filed in patent 5,893,783 fails to describe in detail such that it is enabled a cylinder head exhaust passage communicating with both of said cylinders through said cylinder head of claim 13, lines 3-5.

Drawings

9. New corrected drawings are required in this application because the proposed drawing correction filed July 23, 2003 have been approved. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 13 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Nakai et al.

The cylinder block is 48 while the cylinder head is 57. The two cylinders are cylinders 49 on the left side of figure 3, the cylinders being vertically arranged. The exhaust guide is 27. The cylinder head exhaust passage which communicates with both the cylinders through the cylinder head is passage 86 in figure 2. It communicates with each cylinder through manifold 88. The cylinder block exhaust passage is 88. The exhaust guide passage is 92. As shown in figure 2, the engine has a V type configuration.

Response to Arguments

12. The rejection set forth in paragraphs 8 and 9 of the DETAILED ACTION of the office action mailed November 20, 2002 has been withdrawn in view of applicant's arguments presented on pages 5-9 of the response filed July 23, 2003 under the heading "All Pending Claims Fully Comply With 35 U.S.C. §§ 112 and 251."

13. However, note that a new grounds of rejection under 35 U.S.C. 251 with regard to adding new matter and not being for the same invention have been set forth in view of amendments made to claim 13 as filed September 22, 2003.

14. The rejection of claims 13 and 15 with Ziegler under 35 U.S.C. 102(b) is withdrawn in view of the amendments to claim 13 and applicant's arguments presented in the response filed July 23, 2003, page 10 and under the heading "Ziegler Does Not Anticipate Claims 13 and 15".

15. Applicant's arguments with respect to claims 13 and 14 and Nakai et al were not persuasive. Claims 13 and 14 are still rejected as being anticipated by Nakai et al. The cylinder head exhaust passage which communicates with both cylinders through the cylinder head is passage 86. Passage 86 communicates with two vertically arranged cylinders through the exhaust manifold.

16. The rejection of claim 16 with Isogawa set forth in paragraph 18 of the DETAILED ACTION of the first office action is withdrawn in view of applicant's arguments presented on page 10 of the response filed July 23, 2003 under the heading "Isogawa Does Not Anticipate Claims 16-18 and 20".

17. The rejection of claims 17, 18 and 20 with Isogawa is withdrawn after further consideration because Isogawa does not disclose a first exhaust manifold being connected to the first cylinder head assembly, a second exhaust manifold being connected to the second cylinder head assembly, **an exhaust passage being formed in the cylinder block and comprising a first branch, a second branch and a convergent portion that combines the first branch and the second branch**, the first and second exhaust manifolds separately communicating with the first and second branches respectively.

Conclusion

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sherman D. Basinger whose telephone number is 703-308-1139. The examiner can normally be reached on M-F (6:00-2:30 ET).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel J. Morano can be reached on 703-308-0230. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.



Sherman D. Basinger
Primary Examiner
Art Unit 3617

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Sdb
October 10, 2003